

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ARMONDO GIBB ORTEGA,
Petitioner,
v.
JOHN W. HAVILAND, Warden,
Respondent.

No. 09-02556 CW
ORDER GRANTING,
IN PART,
CERTIFICATE OF
APPEALABILITY
(Docket Number 9)

Petitioner Armondo Gibb Ortega has filed a Notice of Appeal and a request for a certificate of appealability of two of the three claims raised in his petition for a writ of habeas corpus. Pursuant to 28 U.S.C. § 2253(c)(1)(A), an appeal of the final order in a habeas corpus proceeding may not proceed unless a certificate of appealability is issued. A certificate of appealability may issue only if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2); see also, Slack v. McDaniel, 529 U.S. 473, 483 (2000) (certificate of appealability may issue if petitioner shows "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right . . ."). The certificate of appealability must specify which issue or issues satisfies the showing required by § 2253(c)(2). See 28 U.S.C. § 2253(c)(3).

1 The Court certifies in accordance with 28 U.S.C. § 2253 that
2 Petitioner has made a substantial showing of the denial of a
3 constitutional right in regard to his first claim: denial of his
4 Sixth Amendment right to counsel. However, for the reasons set
5 forth in the order denying the petition, Petitioner has not made a
6 substantial showing of the denial of a constitutional right in
7 regard to his second claim: that he was penalized for exercising
8 his right to trial. Petitioner does not seek a certificate of
9 appealability on his third claim. Accordingly, the certificate of
10 appealability is granted, in part.

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13 IT IS SO ORDERED.

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15 Dated: August 25, 2010



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CLAUDIA WILKEN
United States District Judge